

**DLA Piper LLP (US)**

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*Attorneys for Defendants*

*Robert Aaron, Derivatives Portfolio Management, Ltd.,*

*Derivatives Portfolio Management, LLC,*

*DPM Mellon Limited, and*

*DPM Mellon, LLC*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re REFCO INC. SECURITIES LITIGATION

07 MDL No. 1902 (JSR)

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KENNETH M. KRYS, *et al.*,

Plaintiffs,

08 Civ. 7416 (JSR)

-against-

ROBERT AARON, *et al.*,

Defendants.  
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**DECLARATION OF B. JOHN PENDLETON, JR. IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT RE: BREACH OF CONTRACT BY THE DPM DEFENDANTS**

**B. JOHN PENDLETON, JR.**, under penalty of perjury, hereby declares as follows:

I am an attorney-at-law in the State of New Jersey, admitted *pro hac vice* in the United States District Court for the Southern District of New York, and a member of the law firm of DLA Piper LLP (US). I am familiar with the facts and circumstances stated herein and respectfully submit this

declaration in support of Derivatives Portfolio Management, Ltd., Derivatives Portfolio

Management, LLC, DPM Mellon Limited, and DPM Mellon, LLC's Opposition to Plaintiffs' Motion for Partial Summary Judgment re: Breach of Contract by the DPM Defendants.<sup>1</sup>

1. Attached hereto as Exhibit 1 is a true and correct copy of Deposition Transcript Excerpts of Stuart Drake.

2. Attached hereto as Exhibit 2 is a true and correct copy of Deposition Exhibit 4330, Sphinx Board Minutes, dated June 25, 2002.

3. Attached hereto as Exhibit 3 is a true and correct copy of Deposition Transcript Excerpts of Guy Locke.

4. Attached hereto as Exhibit 4 is a true and correct copy of Deposition Transcript Excerpts of Tia Urban Lowe.

5. Attached hereto as Exhibit 5 is a true and correct copy of Deposition Transcript Excerpts of Christopher Rose.

6. Attached hereto as Exhibit 6 is a true and correct copy of Deposition Exhibit 4629, December 29, 2004 email from Christopher Rose re: new DPM contract

7. Attached hereto as Exhibit 7 is a true and correct copy of Deposition Exhibit 5271, an e-mail from Christopher Rose regarding DPM Service Agreement, dated December 9, 2004.

8. Attached hereto as Exhibit 8 is a true and correct copy of Deposition Transcript Excerpts of Guy Castranova.

9. Attached hereto as Exhibit 9 is a true and correct copy of Deposition Exhibit 5269, a Service Agreement between DPM and Sphinx, dated February 27, 2004.

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<sup>1</sup> Plaintiffs excluded Robert Aaron, in his personal capacity, from their Motion for Partial Summary Judgment. Thus, for the purposes of this opposition, the definition of Defendants is limited to the DPM entities.

10. Attached hereto as Exhibit 10 is a true and correct copy of document bates stamped PLF-REM-0059620-26, a Risk Service Agreement between DPM and PlusFunds, dated February 27, 2004.

11. Attached hereto as Exhibit 11 is a true and correct copy of Deposition Transcript Excerpts of Christine Kuna.

12. Attached hereto as Exhibit 12 is a true and correct copy of Deposition Exhibit 5507, the Investment Management Agreement (“IMA”) between Sphinx, Ltd. and PlusFunds, dated July 12, 2002.

13. Attached hereto as Exhibit 13 is a true and correct copy of Deposition Transcript Excerpts of Christopher Aliprandi.

14. Attached hereto as Exhibit 14 is a true and correct copy of Deposition Exhibit 4104, an e-mail regarding the Walkers memo defining “SPC”, dated October 15, 2002.

15. Attached hereto as Exhibit 15 is a true and correct copy of Deposition Transcript Excerpts of Raymond O’Neill.

16. Attached hereto as Exhibit 16 is a true and correct copy of Deposition Transcript Excerpts of Robert Aaron.

17. Attached hereto as Exhibit 17 is a true and correct copy of Deposition Exhibit 5398, a February 19, 2006 email from Jon Knight to Peter Ginsberg.

18. Attached hereto as Exhibit 18 is a true and correct copy of Deposition Exhibit 5396, a February 28, 2006 IM conversation.

19. Attached hereto as Exhibit 19 is a true and correct copy of Deposition Transcript Excerpts of Patrina Farquharson.

20. Attached hereto as Exhibit 20 is a true and correct copy of Deposition Exhibit 5428, a March 2, 2006 email string regarding the removal of Bob Aaron from the SPhinX Board.

21. Attached hereto as Exhibit 21 is a true and correct copy of Deposition Exhibit 5427, a March 2, 2006 email string regarding the removal of Bob Aaron from the SPhinX Board.

22. Attached hereto as Exhibit 22 is a true and correct copy of Deposition Transcript Excerpts of Timothy Phillips.

23. Attached hereto as Exhibit 23 is a true and correct copy of Deposition Transcript excerpts of Yelena Kim Godfrey.

24. Attached hereto as Exhibit 24 is a true and correct copy of Deposition Transcript Excerpts of Gabriel Bousbib.

25. Attached hereto as Exhibit 25 is a true and correct copy of Deposition Transcript Excerpts of Richard Butt.

26. Attached hereto as Exhibit 26 is a true and correct copy of Deposition Transcript Excerpts of Keith Kemp.

27. Attached hereto as Exhibit 27 is a true and correct copy of Deposition Transcript Excerpts of Kristopher Laufer.

28. Attached hereto as Exhibit 28 is a true and correct copy of Deposition Exhibit 4503, an e-mail from Tia Urban regarding process for Refco FX accounts, dated May 12, 2005.

29. Attached hereto as Exhibit 29 is a true and correct copy of Deposition Exhibit 5082, an e-mail forwarding a letter from Susan Haery, dated December 10, 2002.

30. Attached hereto as Exhibit 30 is a true and correct copy of document bates stamped PILLS00042713-18, an email dated April 28, 2006.

31. Attached hereto as Exhibit 31 is a true and correct copy of Deposition Transcript Excerpts of John Mizsak.

32. Attached hereto as Exhibit 32 is a true and correct copy of Deposition Transcript Excerpts of Diego Lago.

33. Attached hereto as Exhibit 33 is a true and correct copy of an example of a DPM data feed dated October 10, 2005, imported into Microsoft Excel and filtered for FX entries, demonstrating balance in RCM accounts. (Produced in electronic format.)

34. Attached hereto as Exhibit 34 is a true and correct copy of NFA Compliance Rule 2-4.

35. Attached hereto as Exhibit 35 is a true and correct copy of The Hedge Fund Law Report, dated January 10, 2013.

36. Attached hereto as Exhibit 36 is a true and correct copy of Deposition Exhibit 4383, an e-mail from Christopher Sugrue regarding Managed Futures Launch, dated December 9, 2002.

37. Attached hereto as Exhibit 37 is a true and correct copy of document bates stamped JPMC-CIV-339741-82.

38. Attached hereto as Exhibit 38 is a true and correct copy of document bates stamped PLF-REM-0011474-76, an e-mail from Chris Rose regarding Managed Futures settlement with Refco, dated May 3, 2006.

39. Attached hereto as Exhibit 39 is a true and correct copy of Deposition Transcript Excerpts of Mark Kavanagh.

40. Attached hereto as Exhibit 40 is a true and correct copy of Deposition Transcript Excerpts of Bojan Trivic.

41. Attached hereto as Exhibit 41 is a true and correct copy of an example of a DPM data feed dated November 4, 2004, imported into Microsoft Excel and filtered for FX entries demonstrating balance in RCM accounts. (Produced in electronic format.).

42. Attached hereto as Exhibit 42 is a true and correct copy of an example of DPM data feed dated January 27, 2005, imported into Microsoft Excel and filtered for FX entries demonstrating balance in RCM accounts. (Produced in electronic format.)

43. Attached hereto as Exhibit 43 is a true and correct copy of an example of DPM data feed dated May 11, 2005, imported into Microsoft Excel and filtered for FX entries demonstrating balance in RCM accounts. (Produced in electronic format.)

44. Attached hereto as Exhibit 44 is a true and correct copy of Plaintiffs' expert disclosure dated January 30, 2012.

45. Attached hereto as Exhibit 45 is a true and correct copy of Deposition Transcript Excerpts of R. David Wallace.

46. Attached hereto as Exhibit 46 is a true and correct copy of document bates stamped REFCO-E-009208276-79, dated May 19, 2005.

47. Attached hereto as Exhibit 47 is a true and correct copy of an email from Gabriel Bousbib dated March 12, 2004.

48. Attached hereto as Exhibit 48 is a true and correct copy of Deposition Transcript Excerpts of Kenneth Gerstein.

49. Attached hereto as Exhibit 49 is a true and correct copy of the complaint filed by the Official Committee of Unsecured Creditors of Refco Inc. et al., on behalf of Refco Capital Markets, Ltd. against SMFF in the United States Bankruptcy Court for the Southern District of New York, Case No. 05-60006(RDD).

50. Attached hereto as Exhibit 50 is a true and correct copy of an email from Terri Becks of Campbell, a Portfolio Manager, dated September 10, 2004.

51. Attached hereto as Exhibit 51 is a true and correct copy of Deposition Transcript Excerpts of Justin Dew.

52. Attached hereto as Exhibit 52 is a true and correct copy of Deposition Transcript Excerpts of Martin Grennell.

53. Attached hereto as Exhibit 53 is a true and correct copy of an email from Susan Staisil dated January 9, 2005.

54. Attached hereto as Exhibit 54 is a true and correct copy of an email from Peter Ewing dated August 24, 2005.

55. Attached hereto as Exhibit 55 is a true and correct copy of Deposition Exhibit 4161, The PlusFunds Group Firm Overview, dated October 2004.

56. Attached hereto as Exhibit 56 is a true and correct copy of the Sphinx, Ltd. Offering Memorandum dated May 2004.

57. Attached hereto as Exhibit 57 is a true and correct copy of Deposition Exhibit 6535, a document listing account numbers and corresponding date opened.

58. Attached hereto as Exhibit 58 is a true and correct copy of Deposition Transcript Excerpts of Jean-Christophe Jouas.

59. Attached hereto as Exhibit 59 is a true and correct copy of Deposition Transcript Excerpts of Oscar Montes.

60. Attached hereto as Exhibit 60 is a true and correct copy of Deposition Transcript Excerpts of Ricardo Mosquera.

61. Attached hereto as Exhibit 61 is a true and correct copy of a Risk Committee Report, dated December 19, 2002.

62. Attached hereto as Exhibit 62 is a true and correct copy of 2005 Risk Committee Reports.

63. Attached hereto as Exhibit 63 is a true and correct copy of Hearing Transcript Excerpts, dated December 19, 2005.

64. Attached hereto as Exhibit 64 is a true and correct copy of Deposition Transcript Excerpts of Nuri Feder.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing is willfully false, I may be subject to punishment.

Dated: Florham Park, New Jersey  
March 5, 2013

DLA PIPER US LLP

By: s/ B. John Pendleton, Jr.  
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